

Rather, the Constitution embraces tolerance, not hostility, toward religion.

And hence the well chronicled retreat from the 1960s- and 70s-era overbroad protections for criminal defendants, restoring a jurisprudential approach that preserves constitutional liberties without unnecessarily frustrating good-faith law enforcement efforts.

That legacy of legal transformation has earned Chief Justice Rehnquist, in the judgment of President Clinton's acting Solicitor General Walter Dellinger, a place—along with John Marshall and Earl Warren—among the three most influential Chief Justices in history.

Yet even so, the Chief's skill in steering the Court, the care and diligence with which he achieved that legacy, is not widely understood. Indeed, many scholars, lawyers, and law students have misperceived the Chief's jurisprudence—incorrectly deeming him, for example, significantly less conservative than Justices Scalia and Thomas—because they have failed to appreciate the distinct role of the Chief Justice, guiding the Court.

Take, for example, *Dickerson v. United States*, reaffirming *Miranda v. Arizona* as the law of the land. At the time of his death, eulogists pointed to *Dickerson* as an example of how the Chief had moderated his views, growing over time away from his Lone Ranger passion and toward an appreciation for elements of the status quo.

In my judgment, that view seriously misapprehends Chief Justice Rehnquist. Indeed, a careful examination of *Dickerson* can illuminate much of how he served as Chief. At the outset, *Dickerson* cannot be understood in isolation; instead, one must consider the entire course of the Chiefs criminal-law jurisprudence.

For decades before *Dickerson*, the Chief had been a vocal critic of *Miranda*. Beginning with *Michigan v. Tucker* in 1974, the Chief authored or joined dozens of opinions limiting *Miranda*'s reach. Viewed by many as one of the worst Warren Court excesses, *Miranda* combined an activist approach—mandating specific police warnings found nowhere in the Constitution—with unsettling outcomes—ensuring, in conjunction with a robust exclusionary rule, that demonstrably guilty criminals could go free on the barest of technicalities.

The predicate for all of the Chief's efforts to cabin in *Miranda* was the notion that the specified warnings were not constitutionally required; rather, they were merely a "prophylactic" measure in aid of the broader constitutional value. Because *Miranda* was prophylactic—because the Constitution did not require its application in every respect—the Chief was able gradually to do much to mitigate its harmful effects.

Enter 18 U.S.C. §3501. Passed in the wake of *Miranda* and signed into law by President Lyndon B. Johnson, §3501, in effect, purported to overrule *Miranda* and return to the underlying constitutional standard of voluntariness for the admission of confessions. Yet, for three decades, §3501 lay dormant on the statute books, all but ignored.

In *Dickerson*, however, a federal court of appeals for the first time gave force to the words of the statute, admitting into evidence a voluntary confession notwithstanding the lack of properly administered *Miranda* warnings. Thus, the validity of §3501 was squarely presented.

If there was one thing the Chief knew, it was the minds of his colleagues; he had a remarkable sense for what his Brethren were and were not willing to do. As a practical matter, there was no way that Justice O'Connor or Justice Kennedy would possibly be willing to overrule *Miranda*. It was too established, too much a part of the legal firmament, for either of them to hazard extinguishing it.

If there had been four votes to overrule *Miranda*, it is difficult to imagine that, given his decades of principled opposition, the Chief would not have readily provided the fifth. But the votes were not there.

In their place was genuine peril. Section 3501 was a statute passed by Congress and signed into law by the President; the only way it could be invalidated was for it to be declared unconstitutional. And, if it were unconstitutional, that would presumably be because *Miranda* was not mere prophylaxis, but itself required by the Constitution.

Had the Chief voted with the dissenters, the majority opinion would have been assigned by the senior Justice in the majority, in this case Justice Stevens. And Justice Stevens, of course, had a very different view of *Miranda* than did the Chief.

It is not difficult to imagine a Justice Stevens *Dickerson* majority, recounting the history of *Miranda* and §3501 and then observing something like, "Although we have often used the term 'prophylactic' to describe *Miranda*, over time it has become interwoven into the basic fabric of our criminal law; thus, today, we make explicit what had been implicit in our prior decisions: *Miranda* is required by the U.S. Constitution. Accordingly, §3501 is unconstitutional."

That holding, in turn, would have undermined the foundation for most if not all of the previous decisions limiting *Miranda*, quietly threatening three decades of the Chief's careful efforts to cabin in that decision appropriately. Therefore, in my judgment, the Chief acted decisively to avoid that consequence. He voted with the majority and assigned the opinion to himself.

With that backdrop, the majority opinion in *Dickerson* is, in many respects, amusing to read. Its holding can be characterized as threefold: First, *Miranda* is NOT required by the Constitution; it is merely prophylactic, and its exceptions remain good law. Second, 18 U.S.C. §3501 is not good law. Third, do not ask why, and please, never, ever, ever cite this opinion for any reason.

Although not what one would describe as the tightest of logical syllogisms, it was the best that could be gotten from the current members of the Court. A majority of Justices agreed with each of the first two propositions, and so therefore—even though the propositions are in significant tension with each other—pursuant to Justice Brennan's famed "rule of five," the Court declared both, and nothing more.

That leadership, I would suggest, is a hallmark of a great Chief Justice. The role of the Chief is unique, and Chief Justice Rehnquist understood his colleagues well. Consistently, he achieved the best legal outcome that could be reached in a given case, in aid of moving inexorably in the long term toward sound and principled jurisprudential doctrine.

For those of us who had the privilege of clerking for the Chief, we came to know a man of enormous intellect, principle, humor, and modesty.

Blessed with an eidetic memory, he seemed to know all the law that ever was. He would routinely amaze his clerks by quizzing them on the exact citation to some case or other; the clerks would, of course, never know the cite, and—off the top of his head—the Chief always would. As his son James observed at the Chief's funeral, he would have said that his dad had forgotten more history than most of us will ever know, but he didn't think his dad had ever forgotten anything.

A Midwesterner, born of modest means, the Chief enlisted in the Army in 1943 at age eighteen. Law has too long been a profession of the privileged few, and it is fitting, and worth noting, that the Chief Justice was an enlisted man, serving as weather observer in North Africa.

Once a week, the Chief played tennis with his clerks. We would play on a public court, and no one ever recognized the older gentlemen playing doubles with three young lawyers. He would also have us over to his house to play charades. One of my favorite memories is his lying on his stomach on the floor, pantomiming firing a rifle and mouthing "pow, pow," as he acted out *All Quiet on the Western Front*.

He enjoyed simple tastes—his favorite lunch was a cheeseburger, a "Miller's Lite," and a single cigarette—and he had little patience for putting on airs. Once, when a law clerk asked him how he went about choosing law clerks, the Chief replied, "Well, I obviously wasn't looking for the best and the brightest, or I wouldn't have chosen you guys." Himself a former law clerk, he had no grand illusions about the job.

He was a kind and decent man. He knew everybody's name in the Court, every police officer and every janitor, and he treated them all with fairness and dignity. For that reason, the respect he enjoyed from his colleagues was unparalleled.

The Chief was beloved by his family, by his colleagues, by the thirty-four years' worth of law clerks whom he befriended, taught, and mentored. His views did not always prevail, but his steady hand at the helm—his vision, leadership, and unwavering principles—made this in every respect the Rehnquist Court.

## ADDITIONAL STATEMENTS

### RECOGNIZING SUSTAINABLE LUMBER CO.

• Mr. DAINES. Mr. President, I rise in recognition of the achievement of Sustainable Lumber Co., located in Missoula, MT. JPMorgan Chase recently announced that Sustainable Lumber Co. has been awarded a \$100,000 grant and business trip to LinkedIn's California headquarters for an opportunity of learning and networking. This award further emphasizes Sustainable Lumber Co. as a fine tribute to the State of Montana, and their both transformative and responsible approach to operating their business has earned them the success they rightfully have achieved.

I also would like to applaud JPMorgan Chase for investing in small businesses, like Sustainable Lumber Co., through its Mission Main Street initiative. These investments in small businesses strengthen our local communities and work as a catalyst towards revitalizing the American Dream.●

### TRIBUTE TO JACOB FRANCOM

• Mr. DAINES. Mr. President, I rise today in recognition of Jacob Francom, a top-tier educator from Troy, MT. Dr. Francom was recently honored as the 2015 Montana Principal of the Year and is an excellent example of the importance of education to the State of Montana.

Dr. Francom has not only succeeded in enhancing and tailoring the professional skills of his staff, but has made great advancements to the technological arenas at his school. He has

also developed and improved the systems of instruction used with the students of Troy Junior and Senior High Schools.

What sets Dr. Francom apart is not only his leadership and pioneering at his own school, but his initiative in helping the schools in other parts of Lincoln County. His efforts are focused on aiding Troy, Libby, and Eureka with hopes to share in the milestones they reach.

At only 36 years old, he has earned a bachelor's degree from Utah State University, a master's degree from University of Arizona, and his doctorate, along with a second master's from The University of Montana. He started his career working at a boarding school in the Yaak, but in 5 short years became a rising star at Troy Junior and Senior High School. Three years later, he was serving as superintendent.

The characteristics that have made Dr. Francom a prime candidate for this award are not limited to his work in the education field. His humility and perseverance have made him a positive and inspiring example for our State. It is with great appreciation that I thank Principal Francom for his work in Troy and across our State.●

#### CONGRATULATING KATHERINE KELLEY

● Mr. HELLER. Mr. President, today I wish to congratulate a true role model in the Nevada community, Ms. Katherine Kelley. Ms. Kelley was crowned both Miss Summerlin and Miss Nevada and recently competed in the Miss America competition. I am truly honored to congratulate her on these great achievements.

The Miss America pageant began in 1921 and is one of the world's largest scholarship providers to young women. The initiative focuses on creating change in the lives of others and contributes a great amount of charity work in communities across the country. This characteristic of giving exemplifies Ms. Kelley's everyday life as a teacher in the Las Vegas community, working to help children excel academically.

Ms. Kelley, a Madisonville, KY, native, moved to Las Vegas in May of 2014 and began working with Teach for America in hopes of helping with the local teacher shortage. She is currently pursuing her master's degree at the University of Nevada, Las Vegas, in the College of Education, studying secondary math education. Along with pursuing her master's degree, she is also a geometry instructor at Mojave High School. Her initial passion for teaching began when she spent time volunteering in the Alabama public school system. Her experience there drove her in her aspirations to create positive change. Through Miss America, Ms. Kelley has had the opportunity to bring light to the importance of school attendance in low-income communities, as well as encourage students

of both genders in their science, technology, engineering, and math studies. The scholarships that Ms. Kelley has earned through Miss America will allow her to finish her master's degree debt free.

I know the citizens of the Silver State are proud to see a fellow Nevadan succeed in pursuing her dreams. Today, I ask my colleagues to join me in congratulating Katherine Kelley on this incredible honor. I wish her the best of luck as she serves as an ambassador for our great State and thank her for her work in helping Nevada's students.●

#### RECOGNIZING HOWARD R. HUGHES COLLEGE OF ENGINEERING

● Mr. HELLER. Mr. President, today I wish to recognize the University of Nevada, Las Vegas, UNLV, Hughes College of Engineering for its incredible work in creating the Flexy-Hand 2 for 5-year-old Hailey Dawson. Hailey was born with Poland syndrome, making it extremely difficult to grip smaller items. The Flexy-Hand 2, a 3D-printed prosthetic device created by the UNLV engineering department, provides Hailey with new technology that addresses this difficulty, giving her the ability to participate in her favorite sport—baseball.

Hailey's mom, Yong Dawson, approached Brendan O'Toole, UNLV's chair of medical engineering, to ask if the department would be willing to create a prosthetic hand for her daughter. O'Toole was eager to take on the project, gathering students from UNLV and local high schools to help. The team has spent nearly 2 years working on the project and continues perfecting the device, including the addition of individual finger movement. Hailey's current Flexy-Hand 2 is the fourth version from the university. The technology fits her palm, connecting the fingers to her wrist, ultimately giving her control of her hand's grasping motion.

Hailey has now had two unique opportunities to show off her prosthetic hand, both throwing out the first pitch at a UNLV baseball game in March and at a Baltimore Orioles game in August. Hailey's mother contacted the Orioles in pursuit of making her child's dreams a reality, asking them for a meet-up. In response, the team invited Hailey and her family to a game and allowed Hailey to throw the opening pitch. Before hitting the field, Hailey had the opportunity to meet Manny Machado and have her hand autographed.

I would like to congratulate Hailey on her participation in these unforgettable experiences and on an excellent first pitch. She is truly a shining example of positivity within the Las Vegas community.

I would also like to recognize UNLV's Howard R. Hughes College of Engineering and Brendan O'Toole for their hard work and dedication to improving the lives of others. This is an inspiring story and should stand as an example

to the Nevada family. The team continues its work not only by fine tuning the Flexy-Hand 2 but also by connecting with other universities to raise awareness about the technology. I ask my colleagues to join me and all Nevadans in congratulating this incredible engineering department for its selfless work in helping a fellow Nevadan. I wish both the university and Hailey luck in all of their future endeavors.●

#### RECOGNIZING DR. YUICHI SHODA, DR. WALTER MISCHER, AND DR. PHILIP PEAKE

● Mrs. MURRAY. Mr. President, I rise today in support of the Golden Goose Award, which recognizes researchers whose seemingly obscure, federally funded research has returned significant benefits to society.

In particular, I rise to celebrate 2015 Golden Goose Awardees Drs. Walter Mischel, Philip Peake, and Yuichi Shoda for the impact of their Marshmallow Test research. Their work—funded by the National Institutes of Health and the National Science Foundation—has had a significant impact on how we understand human behavior, how we educate our children, and even how we save for retirement.

These researchers used a simple test to measure pre-schoolers' self-control, offering children one marshmallow now or two if they could wait just 15 minutes alone with their prospective treat. They never expected to find that how children performed on this simple, silly-sounding test would be related to the children's future SAT scores, their propensity for obesity or drug addiction, and even the very chemistry of their brains.

In their followup study, Dr. Yuichi Shoda, now a professor at the University of Washington, found, based on reporting by parents and teachers, that children who had been able to wait longer for their extra treat at age 4 tended to show better adjustment in adolescence. They had more social and academic competence, were more able to handle stress adeptly, and persisted better in goal pursuit in the face of frustration. The researchers, joined by many collaborators across an array of disciplines, have followed these children now for more than 30 years. They have documented correlations between the ability to delay and life outcomes as diverse as SAT scores, body-mass index, the frequency of drug abuse, and measurable differences in brain functioning, which are visible thanks to modern functional MRI techniques.

Today, Dr. Shoda is looking at how people can benefit from an awareness of the kinds of situations in which they excel at self-control and those in which they are most vulnerable to self-control failure.

Far from a story about fixed fates, their discoveries about the importance of self-control and how it can be cultivated today informs how we teach